

SERC Meeting
March 03, 2005
10:00 am

Rudy Raynes began the meeting at 10:00 am, a quorum was present, for those in attendance see attached roster. The meeting was conducted at the WV DEP office in Kanawha City due legislative meetings at the Capitol Complex. Mr. Raynes thanked WV DEP and Tom Fisher and Jesse Adkins for the use of a DEP board room. The minutes of January 10, 2005, were reviewed. Rudy Raynes asked for corrections, deletions or additions. *Jim Riggs moved to approve the minutes. Alan Abbott seconded. Motion passed.*

Old Business- Mr. Doren Burrell from the Attorney General Office spoke on our request of September 1, 2004 for clarification of the definition of an oil and gas facility. The Independent Oil and Gas Association (IOGA) request of February 16, 2005 opposes the definition of an oil lease in our Tier II guidance documentation. Mr. Burrell stated it was his understanding there were two questions in our letter to the Attorney General. (1) one was guidance on breaks in surface ownership in the definition of an oil and gas facility; and (2) whether this guidance must be promulgated as a legislative rule. Mr. Burrell said the letter from IOGA states the guidance received from the SERC is illegal and affects private rights and industry.

The 1st question I've looked at is your regulation, it uses the term adjacent- means near but not necessarily touching; the term adjoining - means property that is touching each other. I have no doubt that when US EPA drafted this regulation and when WV drafted theirs they considered adjacent to mean touching but in common legal usage it doesn't mean that. Therefore a break in the surface ownership doesn't necessarily break up properties that are considered a facility. However, you're looking for some means of guidance, when I was looking at correspondence between IOGA and the Commission there seemed to be a real mixing of terms between wells, facilities and leases. Those are all three separate items, in regards to a definition it speaks of the storage tanks connections to wells, you may have multiple wells connected to a tank and conceivably you could have multiple tanks connected to one well. An oil lease is something different it's an interest in property and in my reply I gave you an analogy, if you all had to count the storage facilities for hay barns it doesn't matter how many farms there are you want to know how many barns. The intent of the law was to inform communities, first responders and the state on what, where and how much hazardous and extremely hazardous materials are located in the state. The SERC definition indicates the connection of tanks and pipes to wells or extraction units, it appears the dividing line between the facilities is where the pipes run, if there is a break in the pipes. The definition should not be what the surface area looks like as how the connections are made. Mr Burrell said that is what is creating a significant part of the problem with IOGA. An oil gas storage facility means a storage tank and it's well or wells all of which are located on the same site or the adjacent site through direct conveyance of piping or tubing a storage facility may also be the site of several wells and a single storage tank or multiple storage tanks each storage facility will be considered a separate facility - he suggested we include something similar to not connected to one another. Mr. Burrell with work with Laverne to make sure the corrected guidance is in compliance with current legislation. However, since the Tier II reporting deadline ended two days ago this information will not go out until the 2005/2006 reporting period beginning Jan 2006.

The 2nd question presented by IOGA concerning the guidance documents is if they are required to be legislative rules and be promulgated. There is a separate provision in the code covering Interpretive Rules - these are adopted by an agency to provide information or guidance to the public regarding the agencies interpretation on policies or opinion.

It is not intended to be determinative of any issue and it may not be relied upon for criminal or civil sanctions or to regulate private contract. However, it basically provides guidance; it is

arguable the current SERC guidance documents if they were submitted to the Secretary of State as Interpretive Rules are acceptable in the current format. Interpretative rules do not have to be promulgated. The guidance in question "definition of an Oil Lease" does need to be cleaned up. The language does not follow the strict interpretation of the law, however the guidance is not illegal as IOGA contents it is guidance not law. Mr. Burrell said he would feel comfortable arguing the agencies position, and is willing to litigate. He believes this does not rise to the level of legislative rule. Generally courts give substantial deference to an agency that is managing it's own statute. The guidance is not illegal it is designed to assist the public "oil and gas industry" in complying with the legislation and report on the Tier II forms.

There was discussion on why the current legislation to raise Tier II fees have stalled in the House for the last three years. It was noted two delegates work for or are contractors for companies which are regulated. Discussion also centered on IOGA's repeated attempts to reduce natural gas and crude oil companies responsibilities to comply with EPCRA and to pay the required fees. It was noted IOGA has at several meetings indicated if the SERC agrees to reduce their requirements and fees they will permit the bill to pass as well as inform the SERC of numerous facilities who currently do not comply with the law. It has been noted states may make more stringent legislation but not less than federal, at present West Virginia has followed EPA guidelines and can not reduce the requirements on natural gas and crude oil producers.

Mr. Burrell noted in IOGAs Feb 26 letter they actually quote from the EPA letter of 1988 and their quote undercuts their own argument because " sites located in oil fields are usually not adjacent or contiguous, an oil field may be the location of several Title III facilities ". The EPA letter recognizes that there may be multiple facilities connected with a field, this adds additional support to the SERC's position. Mr. Riggs asked what IOGA believes is unfair to the industry. Laverne replied they believe they are being singled out as an industry and pay an unfair amount in correlation to other facilities. Mr. Riggs as if they have more facilities and the answer is yes. There were 7201 crude oil and gas facilities reporting in 2004 and 1093 non oil and gas facilities. This averages out to \$6.47 per site for oil and gas; \$71 per non oil and gas site. Currently oil and gas facilities pay \$25.00 for the 1st 35 "sites" and then an additional \$10 per site. Non oil and gas facilities pay from \$25 - \$100 per site. Mr. Watson and Mr. Raynes met with IOGA and their argument consisted of their continued contention the oil and gas industry is unfairly burdened by the regulation and should not be required to report nor pay fees as they currently do. Mr. Raynes said after the meeting he discussed with Laverne avenues to located the oil and gas facilities IOGA stated were not currently reporting. The current legislation would raise fees for the oil and gas industry per company \$75 per year only; for non oil and gas companies the raise would be from \$75 - \$300 per site. IOGA's said natural gas and crude oil are not really hazardous substances in comparison to someone like Dow Chemical, however it should be noted the last two explosions in Kanawha County were natural gas explosions. Mr. McKinney questioned whether we could obtain information from other state or federal agencies who also regulate these industries. That option will be explored, the Public Service Commission, the agency which issues business licenses and several federal agencies were suggested. There was discussion about obtaining information through the Tax Department, unfortunately that information is proprietary and is not available to anyone outside the department. There are sever penalties for release of such information.

Giles Watson made a motion to change the guidance document for the 2005/2006 reporting year. Jesse Adkins seconded. Motion passed.

A reply letter to IOGA has been composed and is in the packet. The letter will be held until the modifications can be reviewed.

Mr. Burrell said the letter was not inconsistent with the Commission position however, the commission might tone down the letter a little. There was discussion on EPA's role in this situation and if they could assist with public outreach to potential facilities and if necessary

litigation for those facilities who do not comply. The EPA statue is \$25,000 per day for non-compliance. Mr. Gary Morris EPA contractor said EPA would have no problem in assisting the state in compliance issues however, if the state does litigate and obtains EPA's assistance arrangements should be made prior to the court case on reimbursement to the state from fines to industry. Rudy Raynes thanked Mr. Burrell concerning his assistance, the SERC appreciates his hard work and will contact him with further information.

SERC By-Laws - There was discussion on the SERC by-laws; a copy for review is in the packet. Several states by-laws were used and modified to coordinate with state code. Mr. Raynes and the board went through the by-laws, struck out the portions not relevant to West Virginia and requested a corrected copy be provided at the next board meeting. The by-laws will need to be reviewed several times for approved and sent to the Secretary of State's office.

2005 HMEP Grant - These will be reworked and then mailed to counties - deadline will be June/July 2005.

SERC Grants- The January 20th meeting discussed the grants - we can operate on what we have now however, we must reduce the grants in order to stay within the monies collected yearly. Rudy Raynes tried to contact Delegate Sam Cann concerning our legislation however, it looks like our legislation will die this year. The SERC fees from facilities are generated at approximately \$120,000.00. Out of those fees salary, fringe benefits, HMEP matching funds, SERC grants must be paid. At present income that leave approximately \$52,000 for SERC grants. After considerable discussion the commission decided to fix this years grant allocations at \$500 per LEPC, after 1 July the remaining funds will be made available to LEPCs based upon their grant requests and projects. This will be a year by year consideration based upon available funds. Unfortunately, the fund has remained stagnant for several years and until the fees are raised grant allocations will need to be adjusted accordingly. *Jim Riggs moved to allocated grants for the 2005 SERC grants to \$500. Joe Wyatt seconded. Motion approved.*

Plan Reviews -None

LEPC Membership Approvals -None

By-Laws - None

Training Subcommittee - None

SERC Conference - None

Treasurer's Report -None

New Business -None

Jim Riggs moved to adjourn, Giles Watson seconded, Motion passed. Meeting ended at 12:05. **The next scheduled meeting will be May 11th 2005, at 1:00 pm at the EOC in charleston at the capitol complex.**

Schedule of next meetings

May 11th	1:00 pm
July 13th	1:00 pm
Sep 14th	1:00 pm
Nov 9th	1:00 pm